

1  
2  
3  
4  
5  
6  
7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 VAHAN JALADIAN,

No. CIV S-04-1304-LKK-CMK-P

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 C.A. HUGHES, et al.,

15 Defendants.  
16 \_\_\_\_\_/

17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant  
18 to 42 U.S.C. § 1983. On September 14, 2006, the court directed plaintiff to file and serve a pre-  
19 trial statement by January 5, 2007. Plaintiff was warned that failure to comply may result in  
20 dismissal of this action for lack of prosecution and failure to comply with court rules and orders.  
21 To date, plaintiff has not complied.

22 The court must weigh five factors before imposing the harsh sanction of  
23 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.  
24 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's  
25 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)  
26 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,  
2 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an  
3 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.  
4 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is  
5 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,  
6 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to  
7 follow local rules. See Ghazali, 46 F.3d at 53.

8 Having considered these factors, and in light of plaintiff's failure to file a pre-trial  
9 statement as directed, the court finds that dismissal of this action is appropriate.

10 Based on the foregoing, the undersigned recommends that this action be  
11 dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and  
12 orders.

13 These findings and recommendations are submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days  
15 after being served with these findings and recommendations, any party may file written  
16 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
17 Findings and Recommendations." Failure to file objections within the specified time may waive  
18 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19  
20 DATED: June 7, 2007.

21  
22   
23 **CRAIG M. KELLISON**  
24 UNITED STATES MAGISTRATE JUDGE  
25  
26